IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5457 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGMALBHAI JIVABHAI KANDORIYA

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR B.Y. MANKAD, AGP for Respondent No. 1, 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 15/09/2000

ORAL JUDGEMENT

1. The petitioner who is under preventive detention, has challenged the order of detention passed by the detaining authority- learned District Magistrate,

Junagadh on 21.5.2000 in exercise of the powers conferred on her under sub-sec.(2) of sec.3 of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "Act"). While arriving at a subjective satisfaction, the detaining authority has observed that the petitioner is involved in selling of wheat of civil supply kept for distribution to the persons living below the poverty line at a subsidised rate.

2. During the course of submissions, learned counsel Mr. Lakhani has argued that the petitioner is substantially not challenging the cause of detention considered by the detaining authority, but is challenging the act of continuous detention in light of the settled legal position. He, therefore, prayed that the impugned order of detention be quashed as the same is in violation of the provisions of Constitution of India and especially of Article 22(5). According to Mr. Lakhani, impugned order of detention is illegal, bad-in-law and suffers from non-existent grounds based on ingenuine satisfaction and reasons recorded by respondent no.1 District Magistrate. Without prejudice to the other contentions, Mr.Lakhani has drawn attention of this Court to the fact that the person to whom the petitioner is alleged to have sold 10 borries of wheat viz. Proprietor of Jalaram Consumer Stores, was also detained by the very detaining authority in exercise of powers conferred on her under sub-sec.(2) of Sec.3 of the Act. He has further submitted that the aforesaid order of detention was held to be violative of Article 22(5) of the Constitution of India and same was quashed and set aside and the detenu was ordered to be set at liberty forthwith. He has further submitted that more than five other persons were also detained as they had allegedly sold some stock of wheat to the owner and proprietor of Jalaram Consumer Stores and orders of detention passed against those persons were also quashed and set aside by this Court on the ground of said orders being violative of Article 22(5) of the Constitution of India. Mr. Lakhani, therefore, submitted the case of the petitioner should also be considered in light of these facts.

3. The petitioner has challenged constitutional validity and propriety of the order of detention on various grounds mentioned in the petition. However, during the course of submissions, learned counsel Mr. Lakhani has placed reliance mainly on two grounds. The first ground which is pressed in service by learned counsel Mr. Lakhani is reflected in para-4(h), which reads as under:-

"(h) It is submitted that it is stated in the grounds of detention in para-11 that petitioner cannot be prevented from doing such activity by taking action under Sec.12AA of Essential Commodities Act, 1955 and there is no any alternative remedy to prevent the petitioner from doing such alleged activities and that the Order of Detention is the only remedy. It is respectfully submitted that the detaining authority has not applied its mind while considering this lessor drastic remedy u/s 12AA of the Essential Commodities Act. It is submitted that this provision of Sec.12AA (Special Provison,1981) has been lapsed on 1.9.97 as the Central Government has not extended the period of aforesaid Act. Thus, the question of initiating the prosecution u/s 12AA of the Essential Commodities Act, does not arise which shows that the order of Detention is passed in mechanical manner without application of mind. Therefore, also the Order of Detention is liable to be quashed and set aside. "

4. I have gone through the reply affidavit qua this ground filed by the detaining authority - District Magistrate. I am satisfied that there is no proper or precise reply as to the averments made in the petition referred to above. Mr. Lakhani has taken me through the statement of the detenu recorded by the government official and it is not the case that the petitioner was dealing in such types of transactions on various occasions. So, learned counsel Mr. Lakhani has rightly argued that grounds of detention narrated by the detaining authority in the later part of para-12 (on page 26 of the petition), if considered in light of the grounds agitated by the petitioner in para-4(h), this court should hold that the impugned order suffers from non-application of mind or mechanical exercise of powers.

5. The other ground canvassed by learned counsel Mr. Lakhani is that the Central Government has not explained two days' delay in considering the representation sent by the detenu to the concerned authority. Learned counsel Ms. Davawala, in response to the submissions made by learned counsel Mr. Lakhani has resisted the aforesaid ground and has submitted that in view of the ratio propounded in the two decisions; namely (i) Smt. Kamlabai v/s Commissioner of Police, Nagpur & Ors., reported in 1993(3) JT 666, and (ii) Ahmed Nassar v/s State of Tamil Nadu & Others, reported in (1999)8 SCC

473, it should be held that delay in considering representation is not unreasonable or unnecessary. She has submitted that this is not a case of negligence on the part of the government official. This is not a case wherein unreasonable delay is caused in transmitting the file from one table to another or from one department to another. She has further submitted that unless the Court is satisfied, it should be construed that the delay must have been caused for administrative reasons and formal explanation is not material. I have gone through the affidavit-in-reply filed by Shri R.N. Tripathi, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi . Relevant part of the affidavit reveals that "State Government was requested to send the English version of the representation dated 5/7.6.2000 vide telegram dated 9.6.2000. English version of the representation dated 5/7.6.2000 was received in the Department on 20.6.2000 vide State Government's letter dated 14.6.2000. After considering the representation along with other relevant records, the same was rejected by the Competent Authority in the Central Government on 23.6.2000." It transpires from the said affidavit that what had happened between 20th & 23rd of June,2000, has not been explained. The cause for non-consideration of representation for two days inbetween ought to have been explained and brought to the notice of this Court. Undisputedly these two days were working days and it is also not the case of the respondents that as the competent officer who was empowered to consider representation, was not available in the office due to some reason. This Court has consistently held in light of decisions of the Apex Court that unexplained delay of even one day should be viewed seriously and same amounts to violation of Article 22(5) of the Constitution of India. I agree that longer period of delay also can be ignored if the same is reasonably explained. However, this is a case, in my view, wherein the respondents have not explained two days' delay and, therefore, in view of the decision rendered by this Court on 31.8.2000 in Spl.C.A. No. 5522/2000 (Coram: C.K.Buch, J) and in view of the decision of this Court in Special Civil Application No. 9664/99 (Coram : A.L.Dave, J) rendered on 16.3.2000 and the ratio enunciated in the aforesaid decisions, the impugned order of detention can be quashed and set aside on the sole ground of non-explanation of delay in considering the representation. Under the circumstances, the impugned order of detention requires to be quashed and set aside.

6. For the reasons aforesaid, this petition is allowed. The impugned order of detention dated 21.5.2000

passed by the learned District Magistrate, Junagadh against detenu Shri Jagmalbhai Jivabhai Kandoriya, is hereby quashed and set aside. Detenu Shri Jagmalbhai Jivabhai Kandoriya be set at liberty forthwith if not required to be detained in any other case. Rule is made absolute. No costs.

7. Learned counsel Mr.Lakhani has submitted that presently the detenu is detained in Junagadh Jail and, therefore, writ be sent to the Supdt. Junagadh Jail, Junagadh. Hence, writ of this order be sent to Suptd., Junagadh Jail, Junagadh.
DIRECT SERVICE is permitted.

15.9.2000 [C.K. BUCH, J]
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